

INITIAL DISCUSSION FOR ISSUE PAPER

Proposed Regulatory Changes to Clarify Application of Tax to Vending Machine Sales Regulation 1574, *Vending Machine Operators*

Issue

Should Regulation 1574 be amended to eliminate the requirement to have a tax-included statement affixed or posted near vending machines in order for sales to be considered tax included?

Background

Civil Code section 1656.1 was adopted by the Legislature in 1978 and became effective January 1, 1979. This section provides that the addition of sales tax reimbursement to the sales price of tangible personal property sold at retail depends solely on the terms of the agreement of sale, and includes certain rebuttable presumptions regarding the intent of the parties to the agreement of sale.

Regulation 1574 was amended December 7, 1978, to implement the provisions of Civil Code section 1656.1 with respect to vending machine operators. Under the regulation, a vending machine operator who wishes to make sales from vending machines on a tax-included basis must post a sign with a statement in substantially the following form: "All prices of taxable items include sales tax reimbursement computed to the nearest mill." If a person operates more than one machine located in the same place, a sign with this statement posted in a conspicuous location near the machines will satisfy the requirement.

Staff proposes the requirement that a vending machine operator post a tax-included sign to be regarded as making sales on a tax-included basis be eliminated, and a presumption be placed in the regulation that all taxable sales of tangible personal property through vending machines are made on a tax-included basis. The proposed amendments to Regulation 1574 are shown in Exhibit 1.

Discussion of Relevant Tax Law

Although Civil Code section 1656.1 provides certain presumptions regarding when a sale is regarded on a tax-included basis, such as by posting a sign of the type specified in Regulation 1574, it does not preclude the Board from making a regulatory finding that transactions not specifically covered in section 1656.1 are also on a tax-included basis. Based on the nature of this specific industry and the expectations of the parties to the sales transactions through vending machines, staff believes that it is appropriate to presume that a vending machine operator and a person making a taxable purchase through the vending machine agree that the sale price includes any applicable sales tax reimbursement without the posting of a sign.

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Discussion of Proposed Additional Changes to Regulation 1574

Revenue and Taxation Code section 6359.2 provides an exemption for 33 percent of the gross receipts a retailer receives through vending machines from the sale of cold food products, hot coffee, hot tea, and, hot chocolate which are subject to the tax, as further explained in Regulation 1574. The regulation provides a table of percentages which factor into the 33 percent exemption an adjustment for sales made on a tax-included basis for various tax rates beginning with 6.5 percent and increasing one-quarter increments to 8.5 percent. Since there are now district taxes imposed at the rate of one-eighth percent (e.g., City of Clovis, Nevada County, Solano County, and Fresno County), staff recommends that this table of percentages reflect various tax rates in one-eighth percent increments.

Summary

It is the long-standing practice of the vending industry to sell at a tax-included price. Vending machine operators who fail to post the sign do so because they are not aware of the posting requirement. Staff recommends this change because it accurately reflects the understanding of the parties involved.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of 11/17/00

1574idp

Regulation 1574. Vending Machine Operators.

(a) GENERAL.

(1) PERMITS. Persons operating vending machines dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax or dispensing food products at retail for more than 15 cents must obtain permits to engage in the business of selling tangible personal property. One permit is sufficient for all machines of one operator.

A statement in substantially the following form must be affixed upon each vending machine in a conspicuous place:

"This vending machine is operated by

Name of Operator

Address of Operator

who holds Permit No. _____ issued pursuant to the Sales and Use Tax Law."

It is presumed that sales of tangible personal property through vending machines are made on a tax-included basis.

~~Sales will be regarded as having been made on a tax-included basis if a statement in substantially the following form is affixed:~~

~~"All prices of taxable items include sales tax reimbursement computed to the nearest mill."~~

~~If a person operates more than one vending machine located at the same place, that person may, as an alternative to the above requirement, affix a clearly readable sign containing the same information in a conspicuous location near the machines.~~

(2) RECORDS. Adequate and complete records must be kept by the operator showing the location or locations of each machine operated by him or her, the serial number thereof, purchases and inventories of merchandise bought for sale through all such machines, the prices charged by the operator, the gross receipts derived from the operation at each location, the receipts from exempt sales, and the sales price to the operator of all tangible personal property of which the operator is the consumer. Records must be kept of the receipts derived from each machine at a location if differing kinds of merchandise are vended through separate machines at that location.

(3) SCHEDULE SHOWING ALLOCATION BY COUNTY. If the machines are operated in more than one county, a schedule must be attached to the return showing the tax allocable

to each county. If a person purchases property under a resale certificate and dispenses it through a vending machine under circumstances where he or she is considered to be the consumer of the property, a schedule must be attached to the return showing the use tax due thereon allocable to each county.

(4) **SALES TO OPERATORS NOT FURNISHING RESALES CERTIFICATES.** Persons making sales of tangible personal property of a kind the gross receipts from the retail sale of which are taxable, to operators of vending machines to be resold through such machines, must notify this board of the name and address of each operator who fails to furnish a valid resale certificate. In the event such persons fail to so notify the board, or desire to assume tax liability for the operations of particular vending machines, then, pursuant to Revenue and Taxation Code Section 6015, they are required to return the tax to the state, measured by the receipts from the retail sale of the property.

(b) APPLICATION OF TAX.

(1) **IN GENERAL.** Persons operating vending machines dispensing tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax must report and pay to the state the tax upon gross receipts from all sales of such property made through such machines. ~~If the tax-included statement is affixed as provided in Subdivision (a)(1)~~ Since sales through vending machines are presumed to be made on a tax-included basis, taxable gross receipts is total receipts from retail sales through the vending machines after adjusting for sales tax included therein.

(A) PHOTOCOPIES. Tax applies to the gross receipts from sales of photocopies through coin- or card-operated copy machines. However, library districts, municipal libraries, county libraries, or any vendor making sales pursuant to a contract with a library district, municipal library, or county library are consumers of photocopies sold at retail through a coin-or card-operated copy machine located at a library facility.

(B) SALES BY PARENT-TEACHER ASSOCIATIONS. Parent-teacher associations or equivalent associations under Regulation 1597(e) (18 CCR 1597 (e)), are consumers of tangible personal property dispensed through vending machines and are not required to hold seller's permits by reason of such activities.

(C) SALES BY NONPROFIT, CHARITABLE, OR EDUCATION ORGANIZATIONS. Nonprofit, charitable, or education organizations dispensing tangible personal property for 15 cents or less through a vending machine are the consumers of such property and are not required to hold a seller's permit by reason of such activities.

(D) SALES OF WATER. Sales of purified drinking water through vending machines where the water enters the machine through local supply lines and is dispensed into the customer's own containers are exempt from the tax under Revenue and Taxation Code Section 6353.

(2) **FOOD PRODUCTS.** (A) Effective January 1, 1986, tax applies to the gross receipts from the retail sale of food products, including candy and confectionery, dispensed through a vending machine at retail for more than 15 cents unless otherwise exempted as provided below. ~~If the tax included statement is affixed as provided for in subdivision (a)(1),~~ Since sales through vending machines are presumed to be made on a tax-included basis, total receipts from the taxable retail sales of food products ~~which are subject to tax and dispensed through vending machines~~ may should be adjusted to compensate for the sales tax included therein. The term "food products" does not include carbonated beverages. A vending machine operator is a consumer of, and not a retailer of, food products, including candy and confectionery, dispensed through a vending machine at retail for 15 cents or less, effective January 1, 1986. Tax is measured by the sale price to the vending machine operator of such items unless otherwise exempt. If the property sold to the operator is an exempt food product or a nonreturnable container, no tax is payable regardless of the nature of the product when dispensed through the vending machine, and regardless of whether facilities for consumption are furnished at locations of the vending machines. For the purposes of this subdivision, the term "candy and confectionery" includes candy-coated gum products.

~~For the period August 1, 1983 through December 31, 1985, the total gross receipts from the retail sale of food products dispensed through a vending machine were subject to sales tax, irrespective of the retail sales price or whether the food products were sold in a hot or cold condition.~~

(B) Operative January 1, 1988, tax does not apply to the sales, and the vending machine operator is the consumer, of any food products, including candy and confectionery other than beverages or hot prepared food products, sold through a coin-operated bulk vending machine if the amount of each sale is twenty-five cents (\$0.25) or less. For purposes of this regulation, "bulk vending machine" means a vending machine containing unsorted food products, including candy and confectionery, which, upon insertion of a coin, dispenses those products in approximately equal portions, at random, and without selection by the customer. For the purposes of this subdivision, the term "candy and confectionery" includes candy-coated gum products.

(C) Beginning January 1, 1988, a partial exemption from the tax is allowed any retailer who receives gross receipts through vending machines from the sale of cold food products, hot coffee, hot tea and hot chocolate which are subject to the tax. The following percentages of the gross receipts from the sales of such products are subject to the tax: 77% for the calendar year 1988, 55% for the calendar year 1989, and 33% thereafter. This partial exemption does not apply to sales of hot prepared food products (except hot coffee, hot tea and hot chocolate) and receipts from such sales may not be included in the computation of the exemption.

"Gross receipts from the sale of cold food products, hot coffee, hot tea and hot chocolate" represents total receipts after adjusting for sales tax included. Therefore, in order to determine taxable receipts, an adjustment must be made to compensate for sales tax included in total

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receipts. Following is an example of the computation during the year 1991 using the 7 1/4 percent rate:

Total receipts from sales of cold food product, hot coffee, hot tea and hot chocolate through vending machines	<u>\$10,000.00</u>
Factor	<u>32.2289%</u>
Taxable receipts	<u>\$3,222.89</u>
Tax rate	<u>7.25%</u>
Tax included	<u>\$233.66</u>
Exempt receipts	<u>\$6,543.45</u>
Proof: \$10,000 – 233.66 = \$9,766.34	
\$9,766.34 x 33% = \$3,222.89	

~~In order to use the above calculation and claim a tax included deduction, a tax included statement as provided in subdivision (a)(1) must be displayed conspicuously on or near each machine.~~

Gross receipts from the sale of cold food products, hot coffee, hot tea and hot chocolate subject to the tax may be calculated for the year 1990 and forward using the following percentages for the tax rates indicated:

TAX RATE	PERCENTAGE	TAX RATE	PERCENTAGE
6.00%	32.3593%	7.50%	32.2030%
6.50%	32.3070%	<u>7.625%</u>	<u>32.1900%</u>
<u>6.625%</u>	<u>32.2940%</u>	7.75%	32.1771%
6.75%	32.2809%	<u>7.875%</u>	<u>32.1641%</u>
<u>6.875%</u>	<u>32.2679%</u>	8.00%	32.1512%
7.00%	32.2549%	<u>8.125%</u>	<u>32.1383%</u>
<u>7.125%</u>	<u>32.2419%</u>	8.25%	32.1254%
7.25%	32.2289%	<u>8.375%</u>	<u>32.1125%</u>
<u>7.375%</u>	<u>32.2160%</u>	8.50%	32.0996%

(D) Tax does not apply to sales of any food products, whether sold through a vending machine or otherwise, to students of a school by public or private schools, school districts, student organizations, or any blind person (as defined in Section 19153 of the Welfare and Institutions Code) operating a restaurant or vending stand in an educational institution under Article 5 (commencing with Section 19625) of Chapter 6 of Part 2 of Division 10 of the Welfare and Institutions Code.

(3) DEFINITIONS. (A) FOOD PRODUCTS. For the period July 15, 1991 through November 30, 1992, the term "food products" does not include snack foods (as defined in Regulation 1602 (18 CCR 1602), "Food Products"), nonmedicated gum, candy, and confectionery. Sales during this period of such items through vending machines are subject to the tax unless exempted under subdivisions (b)(1) and (b)(2) above.

(B) NONPROFIT ORGANIZATIONS. Nonprofit organizations include any group, association, or corporation which is formed for charitable, religious, scientific, social, literary, educational, recreational, benevolent or any other purpose, provided that no part of the net earnings of such organization inures to the benefit of any member, shareholder, director, officer, or any person having a personal and private interest in the activities of the organization. Examples of this type of organization are museums, veterans organizations, youth sportsmanship organizations, clubs such as the Kiwanis Club, fraternal societies, orders or associations operating under the lodge system such as the Loyal Order of the Moose, and student organizations.

(C) CHARITABLE ORGANIZATIONS. Charitable organizations include any group, association, or corporation created for or devoted to charitable purposes, the net earnings of which are used solely for charitable purposes such as the relief of poverty, advancement of education, the advancement of religion, the promotion of health and the promotion of government. Examples of this type of organization are libraries, museums, hospitals, senior citizen community centers, thrift shops, and organizations such as the Salvation Army and Goodwill.

(D) EDUCATION ORGANIZATIONS. Education organizations include any profit or nonprofit group, association, or corporation which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its education activities are regularly carried on. Examples of such organizations are primary and secondary schools, colleges, professional and trade schools, whether public, private, nonprofit or profit making.

(4) Resale and Exemption Certificates.

(A) Vendors of Items for 15 Cents or Less Only. A purchaser who sells the property purchased only through vending machines for 15 cents or less may give an exemption certificate with respect to the purchase of nonreturnable containers, but may not give a resale certificate with respect to the purchase of any other property. The supplier is responsible for payment of sales tax on the gross receipts from the sales to the purchaser of property, the sale of which is subject to tax.

(B) Vendors of Items for 15 Cents or Less and Over 15 Cents. A purchaser who holds a valid seller's permit and who sells the property purchased only through vending machines both at prices of 15 cents or less and at prices of more than 15 cents may give a resale certificate with respect to the purchases of such property.

(C) Vendors Selling Both Through Vending Machines and Otherwise. A purchaser who holds a valid seller's permit and who sells the property purchased both through vending machines and other than through vending machines may give a resale certificate with respect to the purchases of such property.

(D) Vendors Not Segregating Purchases. A purchaser who does not wish to segregate the purchases of property which is sold through vending machines for 15 cents or less from purchases of like property which is otherwise sold, may reimburse his or her vendor for sales tax measured by the retail selling price of all such property provided the vendor is authorized to report and pay the tax to the state in the manner provided by Section 6015.

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